IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10947 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEMANT HASMUKHLAL KHATRI THRO' FATHER HASMUKHLAL THAKOR

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR SAMIR DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/02/2001

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. Challenge has been made by petitioner Hemant Hasmukhlal Khatri, detenu, at present detained in Special

Jail, Porbandar, by this petition under Article 226 of the constitution to the order dated 5.10.2000 of the Commissioner of Police, Surat City, Surat, under which he was ordered to be detained as a `bootlegger'.

#. Reply to the special civil application has not been filed. The facts stated in the petition stand uncontroverted and are to be taken to be correct.

#. The learned counsel or the petitioner raised manifold contentions challenging the order impugned in this special civil application of the detaining authority, but as this matter deserves acceptance only on one ground, no need to refer, discuss and give finding on all other contentions. This course is adopted to save precious and valuable time of the court which is facing serious problem of overcoming heavy pendency of the matters.

#. In the petition, the petitioner made grievance that he, through his advocate, demanded certain important particulars and documents from respondent No.2 including material on the basis of which allegations are made against the petitioner in para 2 of page 1 of the grounds of detention, legible copies of page no.2, 7 and 11, material to connect Mr.S.R.Taylor, exact place of incident stated by anonymous witnesses, F.S.L. report in C.R. No.5388/2000, statements of witnesses recorded in the proceedings started under section 107 of CR.P.C., but the copies of those documents were not supplied. These factual averments remain uncontroverted by respondents. Out of these documents, copies of which were demanded by petitioner, certainly, F.S.L. report, legible copies of documents at page no.2, 7 and 11 and statements of witnesses recorded in the proceedings under Section 107 of CR.P.C. were vital documents to the present case and non supply thereof makes continued detention of the petitioner invalid. In paragraph 36A, the petitioner made a grievance that there is a considerable delay in not deciding the representation of the petitioner made against the detention and communication the result thereof. The uncontroverted facts are that the petitioner filed representation dated 17.10.2000 through the father-in-law to the Hon'ble Chief Minister of the State which was received by the office of the Hon'ble Chief Minister on 19.10.2000. That representation came to be rejected by State Government on 8.11.2000. Firstly, there is a delay in deciding the representation. This delay has not been explained by respondents by filing reply to the special civil application. This is fatal to the order of detention. There is also a long unexplained and unreasonable delay in communication of

this decision to the petitioner. This was received by petitioner on 22.11.2000.

#. On these grounds, this petition deserves acceptance and the same is allowed and the order of detention of the petitioner dated 05.10.2000 is quashed and set aside. The petitioner - Hemant Hasmukhlal Khatri, the detenu, at present in Special Jail, Porbandar, be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. In the facts of this case and more particularly, the fairness with which the learned counsel for the respondents has come before this court, no order as to costs.

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(sunil)